

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS DIANA MILLER**

**(b)** County of Residence of First Listed Plaintiff BURLINGTON  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number) Cary L. Flitter, Esq., and  
Theodore E. Lorenz, Esq., Flitter Lorenz, P.C., 450 N. Narberth Avenue, Suite 101, Narberth,  
PA 19072, (610) 822-0782

**DEFENDANTS NATIONAL CREDIT AUDIT CORPORATION**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
		<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
---	---	--	---	--	---	--

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):

Brief description of cause: FDCPA 15 USC § 1692

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23      **DEMAND \$**      CHECK YES only if demanded in complaint  
**JURY DEMAND:**  Yes  No.

**VIII. RELATED CASE(S) IF ANY** (See instructions): **JUDGE** **DOCKET NUMBER**

DATE 12/4/13 SIGNATURE OF ATTORNEY OF RECORD   
FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

DIANA MILLER  
P.O. Box 2151  
Vincentown, NJ 08088

Plaintiff

NO.

vs.

NATIONAL CREDIT AUDIT  
CORPORATION  
8512 Allen Road  
Peoria, IL 61615

Defendant

**COMPLAINT**

**I. INTRODUCTION**

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (“FDCPA”).
2. The FDCPA prohibits collectors from engaging in deceptive and unfair practices in the collection of consumer debt.
3. Defendant is subject to strict liability for sending a collection letter which violates the provisions of the FDCPA.

**II. JURISDICTION**

4. Jurisdiction arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.

**III. PARTIES**

5. Plaintiff is Diana Miller. She is a consumer who resides in Vincentown, New Jersey.
6. Defendant is National Credit Audit Corporation, a debt collection firm with a mailing address as captioned (hereinafter referred to as “NCAC”).

7. NCAC regularly engages in the collection of consumer debts using the mails and telephone.
8. NCAC regularly attempts to collect consumer debts alleged to be due another.
9. NCAC is a “debt collector” as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

**IV. STATEMENT OF CLAIM**

10. On or about March 18, 2013, defendant NCAC sent Plaintiff a collection notice seeking to collect an alleged consumer debt. A copy of the collection notice is appended hereto as Exhibit “A”(appropriately redacted for privacy per Fed. R. Civ. P. 5.2).

11. The March 18, 2013 letter was sent about one month after NCAC’s initial communication to Ms. Miller, which set forth the validation rights notice mandated by the FDCPA at 15 U.S.C. § 1692g.

12. Section 1692g of the FDCPA provides consumers with an informal dispute mechanism by which the consumer can seek verification and validation of an alleged debt.

13. In its March 18, 2013 letter, Defendant states: “Unfortunately, you have failed to respond in a timely manner. As a consequence, we are now legally entitled to assume that you acknowledge the debt but are refusing to pay voluntarily.” (Ex. “A”).

14. Defendant’s statement in its March 18 , 2013 letter that plaintiff’s failure to dispute the debt allows Defendant to “assume that you acknowledge the debt but are refusing to pay voluntarily” is a false, deceptive and misleading statement in violation of the FDCPA. 15 U.S.C. §1692e and §1692e(10).

15. Under the FDCPA, if a consumer does not dispute the validity of a debt, a debt collector can only assume the debt is valid for the purpose of proceeding with collection activity. 15 U.S.C. §1692g(a)(3).

16. The word “acknowledge” has a legal meaning in New Jersey which takes on particular significance in the context of debt collections; the act of “acknowledging” a debt can potentially toll the statute of limitations.

17. The failure of a consumer to dispute a debt does not “acknowledge” the alleged debt or create an indisputable legal obligation. A consumer can dispute the validity of an alleged debt at any time.

18. Failure to dispute a debt has no legal effect on a debtor’s rights.

19. Pursuant to §1692g(c) of the FDCPA, “the failure of the consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.”

20. The least sophisticated consumer may be confused that inaction has led to some legal “acknowledgment”, when that is not the case.

#### **COUNT I - FAIR DEBT COLLECTION PRACTICES ACT**

21. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

22. Defendant has violated the Fair Debt Collection Practices Act by sending a false, deceptive, and misleading communication in violation of 15 U.S.C. §1692e and §1692e(10).

**WHEREFORE**, Plaintiff Diana Miller demands judgment against defendant National Credit Audit Corp. for:

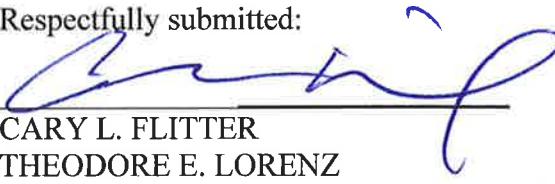
- (a) Damages;
- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and proper.

**V. DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Date: 12/4/13

Respectfully submitted:

  
CARY L. FLITTER  
THEODORE E. LORENZ  
ANDREW M. MILZ  
Attorneys for Plaintiff

**FLITTER LORENZ, P.C.**  
525 Rt. 73 South, Ste. 200  
Marlton, NJ 08053  
856-396-0600

# **EXHIBIT “A”**



National Credit Audit Corporation

P.O. Box 515489, Dallas, TX 75251-5489

March 18, 2013

Diana Miller  
772 WESTMINSTER DR N  
SOUTHAMPTON, NJ 08088-1129

RE: Easthampton

L22

File # [REDACTED] 33

Balance [REDACTED]

Dear Diana Miller,

We have corresponded with you previously, concerning the above referenced account.

Unfortunately, you have failed to respond in a timely manner. As a consequence, we are now legally entitled to assume that you acknowledge the debt but are refusing to pay voluntarily.

My client expects me to pursue all available legal remedies to effect collection of your account. I urge you to make additional collection efforts unnecessary by remitting the balance or contacting me immediately to discuss payment options. Our payment address is **NCAC, P.O. Box 7247-7437, Philadelphia, PA 19170-7437**. For your convenience, we can accept at no additional cost, checks by phone, Western Union Quick Collect, credit and debit cards. Please call today or visit our website at **payncac.com** for account information and payment options.

Further procrastination on your part will only result in greater expense as well as other undesirable consequences. Act now to protect your credit. I will allow 7 days for your response.

Sincerely,

Rosalinda Garcia Ext: 4418  
469-621-0464  
800 779-4894

This is an attempt to collect a debt. Any information obtained will be used for that purpose.